



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SUPPORT STAFF ASSOCIATION OF	:	
MOULTONBOROUGH AND NEA-NEW HAMPSHIRE	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. M-0742:1
	:	
MOULTONBOROUGH SCHOOL DISTRICT	:	DECISION NO. 97-116
	:	
Respondent	:	

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### APPEARANCES

Representing Support Staff Association of Moultonborough  
and NEA-New Hampshire:

Janet Paddleford, UniServ Director

Representing Moultonborough School District:

Edward Lawson, Esq.

Also appearing:

Anne-Marie Quinn, Moultonborough School District  
Mary-Ellen Azem, Moultonborough School District  
Pat Schaffer, Moultonborough School District  
Kenneth Greenbaum, Moultonborough School District  
Suzanne Fullerton, M.S.S.A.  
Donna M. Olivetta, M.S.S.A.  
Deborah Setzer, M.S.S.A.  
Jean E. Williams, M.S.S.A.  
Cynthia Tolman, M.S.S.A.  
Annette Rowland, M.S.S.A.  
Kathy Loring, M.S.S.A.

### BACKGROUND

On September 22, 1997, the Support Staff Association (Association) of Moultonborough and NEA-New Hampshire filed unfair labor practice charges alleging interference with the formation of a bargaining unit by changing working conditions contrary to RSA 273-A:5 I (a), (b), (c) and (g). The Moultonborough School District (District) answered these charges on October 7, 1997, responding that changes were made to conform written policies to actual practices revealed through testimony at a July PELRB hearing on unit certification. A hearing on the unfair labor practice charges was held before the undersigned hearing officer on October 28, 1997, at which time the record of evidence was closed. Post hearing briefs were submitted.

### FINDINGS OF FACT

1. The Moultonborough School District employs teachers, instructional assistants and other personnel in the operation of its schools and so is a public employer within the meaning of RSA 273-A:1 X.
2. The Support Staff Association of Moultonborough and NEA-New Hampshire were engaged in a campaign to organize a bargaining unit for instructional assistants, knowledge of which became public in March, 1997. The campaign resulted in the filing of a petition on May 8, 1997, requesting certification of a bargaining unit for instructional assistants. A certification hearing was held on July 2, 1997 and a decision followed on September 19, 1997. NEA-NH's request to represent this bargaining unit was denied because NEA-NH represents the bargaining unit for teachers, some of whom supervise instructional assistants. The decision, PELRB Decision No. 97-077, was appealed to the full board on September 26, 1997.
3. On April 7, 1997, Principal 'Chele Miller, issued a memorandum to teachers and instructional assistants "...to make it generally known" that she and Pat Schaffer were working on restructuring the special education service delivery system. Patricia Schaffer, Director of Pupil Personnel Services, heads the Title I, home schooling and special education programs for the School District. She testified that adjustments to the special education program had long been under discussion and happened to coincide with the support staff's campaign to form a bargaining unit.

4. Pat Schaffer held a meeting with two consulting teachers, Mary-Ellen Azem and Carissa O'Gara, on July 16, 1997. They decided the assignments for instructional assistants which were announced in a memorandum dated July 17, 1997 (Association Exhibit No. 7). The concluding paragraphs of this memorandum stress "flexible availability" on the part of instructional assistants and identified the preceding concept as a "new structure" which will better serve the needs of students.
5. At the school board meeting of July 14, 1997, four policy changes were introduced and laid on the table for one month for research and public comment (Association No. 4.) At the August board meeting, Cynthia Tolman, instructional assistant, raised questions about the effects of the proposed policy changes. Subsequently, the proposed changes were referred to the policy committee for discussion before the next board meeting. At the September board meeting, Cynthia Tolman asked that the proposed changes remain on the table in order to maintain the *status quo* pending the issuance of the decision regarding certification of the bargaining unit. The school board voted to accept three policy changes and to table one proposed change for the above noted reason.
6. Superintendent Greenbaum testified that the sole reason for the proposed changes to the special education program was to bring fifteen year old written policies into conformity with practices of today in the areas of hiring, assignments and transfers, and supervision. He indicated that the inaccuracies in the written policies stood out in relief during the testimony at the July 2, 1997, certification hearing and that there were no real changes in the policies as practiced but that there were changes in the wording of policies. The proposed policy change on staff development was rejected by the school board because there were complaints that it contained a substantial change which upset the *status quo*. In the three policies that were approved, wording was changed to show that authority had been transferred from the superintendent or principal to lower level supervisor or administrators.
7. Six instructional/teaching assistants testified that there had been changes to their working

conditions this year related to the policy changes. Changes include new procedures for: receiving assignments, arranging attendance at field trips, helping the classroom teacher with the general population of students, evaluating instructional assistants (Association Exhibit No. 10) and determining who will work during the last days of the school year. There are new requirements that instructional assistants be available to work in both buildings in which teaching of special needs children takes place. In general, this year, the special education consulting teacher works more closely with instructional assistants. Last year, instructional assistants worked closely with their classroom teachers. Instructional assistants no longer are identified with a classroom and teacher though each is "housed" in a particular classroom. For instance, an assistant no longer has her name on the classroom door along with the teacher's name.

8. There is a change in the expectation that instructional assistants will substitute teach for classroom teachers. Donna Olivetta testified that, when an instructional assistant substitutes for a teacher, the assistant is now paid by the hour. In past years, an the assistant was paid fifty dollars per diem to substitute for the classroom teacher. Donna Olivetta stated that the consulting teacher to whom she reports wants her to be available for students with individual education plans rather than to substitute for classroom teachers.
9. Consulting teacher, Mary-Ellen Azem, conducted a meeting for instructional assistants on October 10, 1997. She informed them of changes in procedures including the method of seeking approval for field trips and obtaining assignments to work the last few days of the school year when no classes are taught.
10. Jean Williams is a Title I teacher who has worked in special education for the District since 1981. She testified that she had been assigned a different classroom this year. In past years, she made out her own schedule and then discussed it with the classroom teacher. This year, the consulting teacher made out the schedule. In prior years, she and the classroom teacher had worked as a team in a collaborative manner. She assisted the teacher with tasks such as copying material for the whole class when

not working with a special needs student. This year, the consulting teacher has told her not to work with non-identified students and to be available to move to other classrooms in her school and in the high school as the need for a special education teacher arises. She now meets with the consulting teacher for half an hour each week and before team meeting every two weeks. She has not been told who supervises her this year but she feels that the consulting teacher has been given more authority over the instructional assistants this year.

11. Evaluation forms have been changed for the 1997-98 school year. Signatories are the instructional assistant, consulting teacher and director of special education. The classroom teacher is not included. In general, the role of the classroom teacher in relation to instructional assistants is de-emphasized and the role of special education professionals is strengthened (Association Exhibit No. 10). Testimony from Academy English teacher Elizabeth Loring and Academy instructional assistant Deborah Setzer made clear that those working in special education at the high school level experience different conditions from their counterparts at the elementary school level. High school teachers have not supervised assistants as has occurred in self-contained classrooms at the elementary school.
12. The record contains two job descriptions for special education instructional assistants. They are the job description used last year (Association No. 8) and this year's job description for the position of special education instructional assistant. (Association No. 9). Contrasting the two, the roles of the classroom teacher and principal for in the special education program are diminished in favor of special education personnel, who are the consulting teacher and the director of special education. The instructional assistants primary responsibilities now focus on meeting the needs of the special education population.

#### DECISION AND ORDER

The Association has charged the District with making illegal changes in terms and conditions of employment in order to prevent a group of employees from organizing with the representative of their choice contrary to RSA 273-A:5 I (a), (b), (c) and (g). The District responds that it has adopted changes to bring policies into

conformance with practices and that it has no objection to, and has taken no action against, the formation of a bargaining unit. The only substantive objection to bargaining unit certification stated by the District was to the support staff's choice of the NEA-New Hampshire to be its representative because, if certified, NEA-New Hampshire would provide dual representation to teachers and to support staff whom some teachers supervise. PELRB Decision No. 97-077.

During an organizational campaign to form a bargaining unit, the conduct of the employer is subject to scrutiny. The public employer must avoid pre-election conduct which may influence employees in the matter of the choice to organize during the "critical period" which begins with the filing of the petition to certify a bargaining unit. *AFSCME Local 1348, Hanover Town Employees v. Town of Hanover*, Decision No. 95-047. Management's prerogative to make broad policy changes is not limited by the prohibition but, if some action disturbs the status quo so as to effect terms and conditions of employment during this critical period, such conduct may be an unfair labor practice pursuant to RSA 273-A:5 I.

In *Appeal of Professional Firefighters of East Derry*, 138 N.H. 142, 145 (1993), the New Hampshire Supreme Court clarified that, an unfair labor practice violation of RSA 273-A:5 I (a) and (d) practice will be found only in the presence of some degree of anti-union motivation or animus. The presence of a degree of animus must be shown to have motivated the employer's impermissible actions by a preponderance of the evidence.

The Moultonborough School District has made policy changes since the May 8, 1997, filing of the certification petition. These changes have impacted the conditions of employment under which support staff carry out their daily duties. This is especially so at the elementary school level. The Association has argued that these changes were illegally motivated and that fears of retaliation are held by instructional assistants. However, instructional assistants expressed only dislike of the changes. Their testimony expressed no intimidation or fear related to the complained of changes. No evidence has been put forth to show that these changes were made to discourage the formation of a bargaining unit or to influence the choice of one representative over another. Rather, the employer has disregarded the need to avoid disrupting the status quo while carrying out revision of its special education program.

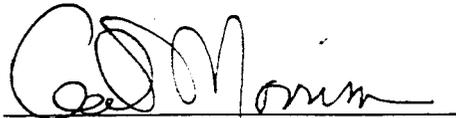
The policy revisions discussed by Superintendent Greenbaum reflected alterations to the special education program already in progress with regard to hiring, directing, supervising and evaluating methods. As Pat Schaffer testified, there has been a shift in emphasis away from general classroom teacher control and interaction with instructional assistants to more special education consulting

teacher supervision and interaction with instructional assistants. This has yielded greater accountability of instructional assistants to the special education program. It is noted that both the classroom teacher and the consulting teacher are bargaining unit positions. These are policy changes adopted for wholly permissible reasons but carried out with knowledge of and disregard for its impact (Finding No. 5) which would be violative of RSA 273-A:5 I (g) in other circumstances. But here, no harm to the cause of organizing is found. There is no violation because the composition of the bargaining unit requested is impermissible, (PELRB Decision No. 97-077.), with or without the changes referenced in Findings 7, 8, 9, 10 and 11.

No unfair labor practice is found to have resulted from the School District's policy changes to its special education delivery system.

So ordered.

Signed this 24th day of December, 1997.



GAIL C. MORRISON  
Hearing Officer